

1. **T**HE Infants Lawyer. 8°. price 4 s.
 2. *Art Clericalis*; or, The Art of Conveyancing explained. 2 Vols. 8°.
 3. A Treatise of Trover and Conversion; with an Abstract of the Law of Detinue. 8°.
 4. *Art Transferendi Dominium*; or, A Law-Guide to the Conveyancer. 8°.
 5. *Legis Series*; or, The Process of the Law in Order. The second Edition, with Additions. price 6 d.
 6. *Jus Primogeniti*; or, The Dignity, Right and Privilege of the First-born, inquired and defended against the impious Practice of some Fathers, in disinheriting their First-begotten Sons. 4 s.
-

Advertisement.

THIS Treatise of *Hereditary Descents*, was transcribed from a Manuscript, entitled, *An Analysis of the Laws of England*, written by my Lord Chief Justice Hale. The *Analysis* is divided into Chapters, each treating of a particular Subject; whereof the following Discourse is one entire Chapter. That there is such a Manuscript extant, and known to be my Lord Hale's, see, *A Discourse of Bonds of Resignation*, by Dr. Stillingfleet, late Bishop of Worcester, page 112.

1. **T**HE Infants Lawyer. 8°. price 4 s.
 2. *Art Clericalis*; or, The Art of Conveyancing explained. 2 Vols. 8°.
 3. A Treatise of Trover and Conversion; with an Abstract of the Law of Detinue. 8°.
 4. *Art Transferendi Dominium*; or, A Law-Guide to the Conveyancer. 8°.
 5. *Legis Series*; or, The Process of the Law in Order. The second Edition, with Additions. price 6 d.
 6. *Jus Primogeniti*; or, The Dignity, Right and Privilege of the First-born, inquired and defended against the impious Practice of some Fathers, in disinheriting their First-begotten Sons. 4 s.
-

Advertisement.

THIS Treatise of *Hereditary Descents*, was transcribed from a Manuscript, entitled, *An Analysis of the Laws of England*, written by my Lord Chief Justice Hale. The *Analysis* is divided into Chapters, each treating of a particular Subject; whereof the following Discourse is one entire Chapter. That there is such a Manuscript extant, and known to be my Lord Hale's, see, *A Discourse of Bonds of Resignation*, by Dr. Stillingfleet, late Bishop of Worcester, page 112.

OR, A
TREATISE
OF
Hereditary Descents:

Shewing The
Rise, Progress and Successive Alterations thereof.

AND ALSO,
The LAWS of Descent, as they are
now in Use.

WITH A
Scheme of Pedigrees; and the Degrees
of Parentage and Consanguinity.

LONDON: Printed, and are to be Sold by Robert Battersby, at Staple-Inn-Gate, next the Bars in Haulbard. 1700.

Dr. Samuel Johnson and James Boswell
O. R. A.
TREATISE

Hereditary Defects:

Showing the
Risks, Progress and Success
five Affections thereof

AND ALSO,
The LAWS of Defect, as they are
now in Use.

WITH A
Scheme of Pedigrees; and the Degrees
of Parentage and Consanguinity.

LONDON: Printed, and are to be sold by Robert Battersby, at St. Paul's Church-yard, near the Gate, in the Year 1760.



H

Rile

The

of

U O
red
A ci

B. S.

TO

T O

Sir J. A. Knight

T H S

TREATISE

1 2

Most Humbly Dedicated

BY HIS

Most Obedient and most

Obedient Servant

TO THE
READER.

THis little Treatise
of Hereditary De-
scents being recommended
to my perusal, I willingly
embraced the opportunity
of shewing my esteem of
the great Learning of the
Author, and my Love for
the Publick in sending it
abroad. And I was the

To the Reader.

rather induced to the
Publication of it, because
upon review of these Pa-
pers, I found the Con-
tents of them to be gene-
rally useful and very in-
structive.

This Treatise I think
may be truly said to
be *Primæ Impressionis*,
the first, nay, and the
only Book of this nature
extant, and our Author
has by his Labour and
Study, shortned the tedi-
ous way of drudging in
large Volumes, by giving

To the Reader

in this Book, in which he
has laid together and ful-
ly digested, whatever is
necessary and useful to
the knowledge of the Law
in this particular. And I
don't doubt but you will
find the Author has brave-
ly acquitted himself in the
management of his Work,
and laid you under the
Obligation of owning the
Depth of his Learning,
and the Strength of his
Judgment.

To the Reader.

I am unwilling to detain you any longer than only to tell you, that tho' in this Treatise there is nothing but what most Practicers do know already; yet the Method I beleive will render it useful in some sort to those of the greatest Learning.

B. S.

D E

A Scheme of

And also, The Degrees of

Adgnati ex parte Patris.

Cousins on the part of the Father, the more worthy in Descents, tho' farther remote.

Linea transversalis seu collateralis
The Side Line.

Abpatrum magnus.

The great Uncles Grand-Father on the Fathers side.

Abamita magna.

The great Uncles Grand-Mother on the Fathers side.

Propatrum magnus.

The great Uncles Father on the Fathers side.

Proamita magna.

The great Uncles Mother on the Fathers side.

Patrum magnus.

The great Uncle on the Fathers side.

Amita magna.

The great Aunt on the Fathers side.

Patruus.

The Uncle or Fathers Brother.

RECTA LINEA

T H

RIGHT

Tritavus.

The great Grand-Fathers great Grand-Father. 6

Attavus.

The great Grand-Fathers Grand-Father. 5

Abavus.

The great Grand-Fathers Father. 4

Proavus.

The great Grand-Father. 3

Avus.

The Grand-Father. 2

Pater.

Father. 1

of Pedigrees:

of Parentage and Consanguinity.

LINEA:

H E

T LINE.

Tritavia.

6 The great Grand-Fathers great Grand-Mother.

Attavia.

5 The great Grand-Fathers Grand-Mother.

Abavia.

4 The great Grand-Fathers Mother.

Proavia.

3 The great Grand-Mother.

Avia.

2 The Grand-Mother.

Mater.

1 Mother.

Cognati ex parte Matris.

Cousins on the part of the Mother, the less worthy in Descents, tho' nearer of Kin.

Linea transversalis seu collateralis
The Side Line.

Abavunculus.

The great Uncles Grand-Father on the Mothers side.

Abmatertera magna.

The great Uncles Grand-Mother on the Mothers side.

Proavunculus magnus.

The great Uncles Father on the Mothers side.

Promatertera magna.

The great Uncles Mother on the Mothers side.

Avunculus magnus.

The great Uncle on the Mothers side.

Matertera magna.

The great Aunt on the Mothers side.

Avunculus.

The Uncle or Mothers Brother.

Avia magna.
Avia ab Ave. The great Aunt on the Fa-
ther's side.

Patruus.
Patruus, quasi The Uncle or Fathers Bro-
ther Patris. ther.

Amita.
Amita, quasi à The Aunt or Fathers Sister.
matre.

Frater, quasi
frater alter. A Brother.

Semi Germanus Frater,
frater, quasi ex Brother of one Fa-
matre Patris & ther, and several Mo-
separatis Ma- thers.
tribus nati.

Soror, quasi
frater una Sister.
diversa.

Patruus à Patruo.
Filius, Filia. Sons or Daughters, Cousin
frater, quasi ex Germans on the Fathers
matre Patris & side.
separatis Ma-

Amitini ab Amita.
Sons or Daughters, Cousin
Germans on the Fathers
side.

Horum. Of these.
Filius, The Son.
Filia. The Daugh-
ter right Cousin
Germans.

Eorum. Of these. *Nepos*
collateralis. The colla-
teral Nephew, Nepos
collateralis. The colla-

Avus.
 The Grand-Father. 2

Pater.
 Father. 1

Linea recta a
 The Right Line

Propo

Linea recta de
 The Right Line

Filius.
 Son. 1

Nepos linealis.
 The lineal Nephew. 2

Pronepos linealis.
 The lineal Nephew
 of Nieces Son. 3

Abnepos linealis.
 The Grand-Son of
 the lineal Nephew
 or Niece. 4

Atnepos linealis.
 The great Grand-Son
 of the lineal Ne-
 phew or Niece. 5

Avia.

2 The Grand-Mother.

Mater.
Mother.

Linea ascendens.

Line ascending.

profusus.

Linea descendens.

Line descending.

Filia.
Daughter.

2 The lineal Niece.

3 The lineal Nephew
or Nieces Daughter.

4 The Grand-Daughter
of the lineal Nephew
or Niece.

5 The great Grand-Daughter
of the lineal Nephew or

Matertera magna.

The great Aunt on the Mothers side.

Avunculus.

The Uncle or Mothers Brother.

Matertera.

The Aunt or Mothers Sister.

Frater,
A Brother.

Uterinus Frater,
Brother of one Mother and several Fathers.

Soror,
Sister.

Avunculus,
quasi Avus minor.

Matertera,
quasi Mater altera.

Uterini, quasi
nati ex eodem
matre.
Frater ex
separatibus
Patribus.

Avunculini ab Avunculo.

Sons or Daughters, Cousin Germans on the Mothers side.

Materterini a matertera.
Sons or Daughters, Cousin Germans on the Mothers side.

Horum. Of these.

Filius. The Son.

Filia. The Daughter, right Cousin Germans.

Eorum. Of these. *Nepos collateralis.* The collateral Nephew. *Nephis collateralis.* The collate-

Sons & Daughters, Cousins
Germans on the Fathers
side.

Eorum. Of these.
Filius. The Son.
Filia. The Daughter
right Cousin
Germans.

Eorum. Of these. *Nepos*
collateralis. The colla-
teral Nephew. *Neptis*
collateralis. The colla-
ral Niece.

Eorundem. Of these. *Pronepos*
collateralis. The collateral
Nephews Son. *Proneptis*
collateralis. The collateral
Nephews Daughter.

Et sic in infinitum.

The lineal Nephew.

Pronepos linealis.
The lineal Nephew
or Nieces Son.

Abnepos linealis.
The Grand-Son of
the lineal Nephew
or Neece.

Atnepos linealis.
The great Grand-Son
of the lineal Ne-
phew or Neece.

Trinepos linealis.
The great Great
Grand-Son of the
lineal Nephew or
Neece.

Et sic in infinitum.

Nepos, quasi
Nis pater.

2 The lineal Neece.

Proneptis linealis.

new 3 The lineal Nephew
or Neeces Daughter.

Abneptis linealis.

of new 4 The Grand-Daughter
of the lineal Ne-
pew or Neece.

Atneptis linealis.

Son Ne-5 The great Grand-
Daughter of the li-
neal Nephew or
Neece.

Trineptis linealis.

at the 6 The great Great
Grand-Daughter of
the lineal Nephew
or Neece.

Et sic in infinitum.

Sons or Daughters, Cousin
Germans on the Mothers
side.

Horum. Of these.

Filius. The Son.

Filia. The Daugh-
ter, right Cousin
Germans.

Eorum. Of these. *Nepos*
collateralis. The collate-
ral Nephew. *Neptis*
collateralis. The collate-
ral Neece.

Eorundem. Of these. *Pronepos*
collateralis. The collateral
Nephews Son. *Proneptis*
collateralis. The collateral
Nephews Daughter.

Et sic in infinitum.

De Successionibus

DE

Successionibus

APUD

ANGLOS.

MY design in the following Discourse is to Treat of the Hereditary Transmission of Lands from Ancestor to Heir, and the certainty thereof, and what growth this Doctrine has had in

B

Sac-

Succession of time, till it arrived to the State and Prefection which now it hath.

And touching Hereditary Transmission, or Succession commonly with us called Descents, I shall hold this Order in my Discourse, (*viz.*)

1st, To give some account touching the Ancient Laws, both *Jewish, Greek* and *Roman*, concerning this matter.

2^{ly}, To observe some things, wherein it may appear, how the particular Customs, or Municipal Laws

Laws of other Countries,
varied from those other
Laws.

3ly, To give some ac-
count of the Rules and Laws
of Descents, or Hereditary
Transmissions as they stood,
and at this day stand in *Eng-
land*, with the successive al-
terations, that process of
time, and the wisdom of
our Ancestors, and Customs
grown up, tacitely, gra-
dually and successively, have
made therein.

And first touching the
Succession or Descent of In-
heritance, as also of Goods,
among the *Jews*, Mr. Selden

in his Book *De Successionibus apud Hebræos*, hath given us an excellent account, as well out of the holy Text, as out of the Comments of Rabbins, or Jewish Lawyers, which I briefly comprise, in the 5, 6, 7, 12 and 13 Chapters of that Book, the sum whereof, for so much as concerns my purpose, is this.

1. That in the descending Line, the Descent or Succession, was unto all the Sons, only the eldest had a double Portion, (viz.) If there were three Sons, the eldest had two fourths, and

and each other Son
one fourth part.

2. The Nephew, or Son
of the Son, dying in
the Fathers Life, and
so in *infinitum*, suc-
ceeded in the partition
of his Father, as if his
Father had been in
Possession of it.

3. The Daughter did not
succeed in the Inhe-
ritance of the Father,
as long as there was
Sons, or Descendants
from them. But if one
Son had died in the
life of his Father, ha-
ving Daughters: and

without Sons, his
Daughters succeeded
in his part, as if he had
been Possessed.

4. In case there were no
Sons but Daughters,
the Daughters equally
succeeded their Father
without any prelation
of the eldest, to two
parts, or a double
Portion.

5. But if the Son had an
Inheritance, and died
without Issue, having
a Father, and Brothers,
the Inheritance of the
Son descended, not
to his Brothers unless

in case of the next Brother taking to Wife the deceased's Wife, to raise Children for the Brother deceased, but in such case the Father inherited his Son entirely.

6. But if the Father were dead, it came to the Brothers, as it were as Heirs to the Father, in the same manner, as if the Inheritance had been actually possessed by him; and therefore, the Fathers other Sons, and their Descendants *in infinitum* succeeded, but



yet equally, and without any double Portion to the eldest, because (though in truth the Brothers succeeded as it were in Right of Representation from the Father; yet) the Father dying before his Son, the Descent was *de facto*, immediately from the Brother to the Brother, where the Law gave not a double Portion; and in case the Father had no Sons, or Descendants from them, then it descended to all the Sisters.

7. If the Son died without Issue, and his Father or any Descendants from him were extant, it went not to the Grandfather, or his other Descendants. But if the Father were dead without Issue, it descended to the Grandfather, and if he were dead, then to his Sons and their Descendants, and for want of them, then to his Daughters or their Descendants, as if the Grandfather himself had been actually possessed, and had died, And so, *mutatis mutan-*

dis, to the *Proavus*, *Abavus*, *Atavus*, &c. But the Inheritance of the Son, never retorted to the Mother, or to any of her Ancestors, but she and they were totally excluded.

8. The double Portion that was therefore *jus primogeniturae* never took place, but in that person that was the *Primogenitus* of him, from whom the Inheritance immediately descended, or in him that represented him. If *A.* had two Sons, *B.* and *C.* and *B.* the eldest, had two

two Sons, *D.* and *E.*
and died, *B.* should have
had a double Portion,
(viz.) two thirds and *C.*
only one third. And if
B. had died in the life
time of *A.* and then *A.*
died, *D.* and *E.* should
have had the two
thirds, or double Porti-
on, which had belong-
ed to *B.* if he had sur-
vived his Father, and
this double Portion
should have been di-
vided between *D.* and
E. thus, viz. *D.* should
have had two thirds of
the two thirds that
came to them, and *E.*
the other third part
thereof.

Among the Græcians, the Laws of Descents, in some sort, resembled those of the Jews. In some things they differed *Vide Petyts Leges Atticæ, Tit. 6. De Testamentis & Hereditario Jure*, where the Text of their Law runs thus, *Omnes Legitimi Filii Hereditatem Paternam ex æquo inter se Hæriscunto. Siquis intestatus moritur, relictis filiabus, qui eas in Uxores ducunt Hæredes sunt. Si nulla supersint, hi ab intestato hæreditatem cernunt. Et primo quidem Fratres defuncti Germani & Legitimi Fratrum Filii hæreditatem simul adeunt. Si nulli Fratres, aut Fratrum Filii* su-

superfint, iis geniti eadem Le-
ge hæreditatem cernunto: Mas-
culi autem iis geniti, etiamsi
remotiori cognationis sint gra-
du, præferuntur. Si nulli super-
fint Paterni proximi ad so-
brinorum usque Filios, mater-
ni defuncti propinqui simili
Lege Hæreditatem aduento. Si
è neutra cognatione superfint
intra definitum gradum, pro-
prior cognatus paternus adito
Notho Nothæve. Superstite legi-
tima Filia, Nothus hæredita-
tem Patris ne adito. This
Law is very obscure, but
the Sence seems to be briefly
this, That all the Sons equal-
ly inherit the Father; but
if he have no Sons, then
the

the Husbands of the Daughters; if he have no Children, then his Brothers, and his Brothers Children; and if none, then his next Kindred of the part of his Father, preferring the Males before the Females; and if none of the Fathers Line, *ad sobrinorum usque Filios*, then to descend to the Mothers Line. *Vide Petyt's Gloss. in hanc Legem.*

Among the *Romans* it appears, that the Laws of Succession did successively vary, for the Laws of the Twelve Tables excluded the Females from Inheriting,
and

and had many other strait-
nesses which were succes-
sively remedied by *Clandi-*
us, and after him by *Hadri-*
anus, in *Senatus=consulto Ter-*
tulliano, and after him by
Justinian, in the third Book
of his Institutes, *De Hære-*
ditaribus quæ ab intestato de-
feruntur, and the two ensu-
ing Titles. And again, all
this further explained, and
settled by the Novel Con-
stitutions of the same *Justi-*
nian, stiled *Authenticæ No-*
vellæ, *de Hæreditatibus ab*
Intestato venientibus, & *agna-*
torum jure sublato; There-
fore omitting the large In-
quiry into the successive
changes

changes of the *Roman Law* in this particular, I shall only set down how, according to the Constitution, the *Roman Law* stands settled therein.

The Descents, or Successions from any Person, are of three Kinds, viz.

1. Descending.

2. Ascending.

3. Collateral, viz. In
Agnatos à Parte Patris, in
Cognatos à Parte Ma-
tris.

1st.

1st, In the descending Line,
these Rules are directed.

1. The descending Line,
whether Male or Female,
whether immediately or
remote; takes place, and
prevents the Descent or
Succession Ascending, or
Collateral, *in infinitum*.

2. The remote Descen-
dants of the Descending
Line, succeed *in Stirpem*,
That is, to succeed into that
right which his Parents
should have had.

3. That this Descent or
Succession is equal in all
the Descendants, without

C : pre-

preference of the Male before the Female. So that, if the Common Ancestor had three Sons and three Daughters, each had a sixth part, and if one died in the life of the Father, having three Sons and three Daughters, that sixth part, that had belonged to the Person dead, should have been equally divided, between his or her six Children, and so *in infinitum*, in the Descending Line.

2^{ly}, In the Ascending Line, there are these Rules.

1. If

1. If the Son die without Issue, or any Descending from him, leaving a Father and Mother, both of them shall equally succeed to the Son, and prevent all others of the Collateral Line, Except Brothers and Sisters, as shall be said, or if only a Father, or only a Mother, he or she alone shall succeed.

2ly, But if the deceased had a Father, Mother, Brother and Sister, *ex utriusque parentibus conjuncti*; they shall all equally succeed the Son; by equal parts, without preference of the Male.

• C 2

3. In

3. In the Collateral Line.

1. If the Descendant die without Father, Mother, Son or Daughter, or any Descending from them in the right Descending Line, the Brothers and Sisters *ex utriusque Parentibus conjuncti*, and the immediate Children of them, shall succeed equally, without preference of either Sex, and the Children from them, shall succeed *in Stirpes*. As if there be a Brother and Sister, and the Sister dies in the Life of the Descendant, leaving one or more Children. All such Children shall succeed in the moiety, that

that should have come to their deceased Mother, had she survived.

2. But if there be no Brothers or Sisters, *ex utriusque Parentibus conjuncti*; nor any of their immediate Children, then the Brothers and Sisters of the Half-blood, and their immediate Children, succeed *in Stirpes*, to the deceased, without any Prerogative to the Male.

3. But if there be no Brothers or Sisters of the whole, or half-blood, nor any of their immediate Children, (for their Grand-Children

C 3 are

are not provided for by Law) then the next Kindred are called to the Inheritance.

4. But if the next be in equal degree, whether on the part of the Father, as *Agnati*; or on the part of the Mother, as *Cognati*, then they are equally called to the Inheritance, and equally succeed *in Capita*, and not *in Stirpes*.

Thus far of these settled Laws of the *Jews*, *Greeks* and *Romans*. But the particular, or Municipal Laws, and Customs of almost every Country, derogate from these Laws, and direct Successi-

Successions in a much different way.

For instance, By the Customs of *Lombardy* (according to which, the Rule of the Feuds, both in their Descents, and other things, are much directed) their Descents are in a much different manner. *Lib. 1.*

Feud. Tit. 1. If a Feud be granted to one Brother, who dies without Issue, it Descends not to his Brother', unless especially so provided in the first Infeudation.—If the Donee dies, having Issue Sons and Daughters, it descends only to the Sons. Whereas, by the *Roman Law*, it descends

both to the Sons and Daughters. The Brother also succeeds not, to the Brother, unless specially so provided, *ibid. Tit. 50.* The Ascendants succeed not, but only the Descendants, neither doth a Daughter succeed, *nisi ex parte, vel nisi sit Feudum femininum.*

If we come nearer home, to the *Normandy* Laws, there are two kind of Lands partable, or not partable; the Lands that are partable, are all *Vavasories*, *Burgages*, and such like, which are much of the nature of our *Soccage Lands*. These descend to all the Sons, or to all the Brothers. Lands not partable

able are Fiefs and Dignities;
these descend to the eldest
Son, and not to all the
Sons, and if there be no
Sons, then to all the Daugh-
ters partable. For want of
Sons and Nephews, it de-
scends to the Daughters, if
no Sons or Daughters; or
Descendants from them, it
descends to the Brothers;
and for want of Brothers,
to the Sisters, observing, as
before, the difference be-
tween Lands partable and
not partable, and according-
ly the Descent runs to the
posterity of the Brothers, un-
to the seventh Degree. And
if there be no Brothers or
Sisters, or any Descendants
from

from them, within the seventh Degree, it descends to the Father; and if the Father be dead, to the Uncles and Aunts, *ut supra*, to Brothers and Sisters; and if there be none, then to the Grand-father. So that, according to their Law, the Father is postpon'd to the Brother and Sister, and their Issues, but is preferred before the Uncle; tho' by the *Jewish* Law, the Father be preferred before the Brother; by the *Roman* Law succeeds together with the Brother; and by the *English* Law, takes not immediately by descent, but the Father's Brother.

2. If

2. If Lands descend from the part of the Father, they never Resort by Descent, to the Line of the Mother; but in cases of Purchases by the Son, who dies without Issue; for want of Heirs of the part of the Father, it descends to the Heir of the part of the Mother, according to the Law of *England*.

3. The Son of the eldest Son, dying in the life of the Father, is preferred, before the younger Son surviving the Father, as the Law stands here now, but it hath some interruption.

4. In

4. In an equality of degree, in Collateral Descents, the Male Line is preferred, before the Female.

5. Although by the Civil Law, *Fratres utriusque Parentis conjuncti, præferuntur fratribus consanguineis tantum, vel uterinis*; yet it should seem, by the Custom of Normandy, That *Fratres consanguinei, viz. ex eodem patre, sed diversa matre*, shall take by Descent, together with the Brothers, *ex utroque conjuncti*, upon the death of any of such Brothers. But this seems to be a mistake, for it seems the Half-blood, hinders

hinders the Descent between Brothers or Sisters.

6. Leprosie was among them, an Impediment of Succession, but then it seems, it must be solemnly adjudged to be a Leprosie, by the Sentence of the Church. Upon this and much more that might be observed, upon the Customs of several Countries, the Rules of Succession, or Hereditary Transmission, have been various in several Countries, according to various Laws, Customs and Usages.

And

And now, after this brief Survey of the Laws and Customs of other Countries, I come to the Laws and Usuages of *England* in relation to Descents, and the growth that those Customs have successively had, and whereunto they are now arrived.

1. Touching the Hereditary Succession, it seems, that according to the Ancient *British* Laws, their eldest Sons inherited their Earldoms, and Baronies, for they had great Dignities, and Jurisdictions annexed to them, and were in nature of Principalities.
But

But their ordinary Freeholds descended to all the Sons ; and this Custom they carried with them into *Wales*, whither they were driven. This appears by the Statute *Walliæ* 12 Ed. 1.

Aliter usitatum est in Wallia quam in Anglia quoad Successionem Hæreditatis, eò quòd Hæreditas partibilis est inter Hæredes Masculos, & à tempore cujus non extiterit Memoria partibilis extitit. Dominus Rex non vult quòd Consuetudo illa abrogetur, sed quòd Hæreditates remaneant partibiles inter Consimiles Hæredes, sicut esse consueverunt, & fiat Partitio illius sicut fieri consuevit ; hoc excepto, quòd Bastardæ

non

non habeant de cætero Hereditates, & etiam quod non habeant Purpartes cum Legitimis, nec sine legitimis. Upon which three things are observable.

First, That at this time, the Hereditary Succession of the eldest Son, was then known to be the Common, and usual Law in *England*.

2ly, That the Succession of all the Sons, was the Ancient Customary Law among the *British* in *Wales*, which is here continued.

3ly, That before this time, Bastards were admitted to Inhe-

Inherit in *Wales*, as well as the Legitimate, which Usage is here abrogated. And although we have but few Evidences, touching the *British* Laws, before their Expulsion into *Wales*, yet this usage seems sufficiently to Evidence, That this was the antient *British* Law.

2ly, As to the times of the *Saxons* and *Danes*, their Laws collected by *Brampton*, and by *Mr. Lambard*, speak not much concerning the Course of Descents. Yet it seems, that commonly the Descents of their ordinary Lands, (at least except *Baronies* and *Royal Inheri-*
D
tances)

tances) descended also to all the Sons. Among the Laws of *Canatus*, there is this Law, *Lambard fol. 122, Tit. de Intestato Mortuis. Sive quis incuria, sive morte repentina fuerit intestato Mortuis, Dominus tamen nullam rerum suarum partem (præter eam quæ jure debetur Hereoti nomine) sibi assumito. Verum eas Judicio suo Uxori, Liberis, & cognatione proximis, jussu (pro suo cuique jure) distribuit.* Upon which we may observe these things.

1st, That the Wife had a share, as well of Lands for her Dower, as Goods.

2/y. That in reference to Hereditary Succession, there then seemed to be little difference, between Lands and Feuds, for here is no distinction.

3/y. That there was a kind of sealed right of Succession, with reference to proximity and remoteness, *pro suo cuique jure*.

4/y. That in reference to Children, they seemed all to succeed alike, without any distinction between the Males and Females.

54, That yet the Ancestor might dispose by his Will, as well of Lands as Goods, which usage seems to have obtained, unto the time of *H. 2.* as appears hereafter by *Glanvil.*

3. It seems, That until the Conquest, the Descent of Lands was, at least to all the Sons alike, and, for ought appears also, to all the Daughters, and that there was no difference in the Hereditary Transmissi-
on of Lands and Goods at least, in reference to the Children. This appears, by those Laws of King *Edward*,
con-

confirmed by the Conqueror and recited in *Lambard fol. 167.* and also by Mr. *Selden upon Eadmerus, Lege 36. Tit. De Intestatorum bonis 184. Siquis intestatus obierit, Liberi ejus Hæreditatem equaliter dividant.*

But this equal division of Inheritances among the Children, was found to be very inconvenient.

For First, It weakened the Strength of the Kingdom, for by frequent parcelling, and subdividing of Inheritances in process of time, Inheritances were so crumbled, that there were few persons of able Estates, left

D 3

to

to undergo publick Charges or Offices.

2^dly, It did by degrees, bring the Inhabitants to a low kind of Country Living, and Families were broken, and the younger Sons, which had they not had these little parcells of Land to apply themselves to, would have betaken themselves either to Trades, or Military, or Civil, or Ecclesiastical Employments, neglected those opportunities, and applied themselves to their small dividends of Land, whereby they neglected opportunities of greater advantage, to enrich themselves

selves and the Kingdom.

And therefore, *William* the Conqueror (having by his accession to the Crown, gotten the Possessions and Demcans of the Crown; and also, very many and great possessions of them that opposed him, or adhered to *Harold*); disposeth of these Lands, or great part of them to his Countrymen, and others that adhered to him, and retained certain *Honorary Tenures*, either by Baronage, or in Knights Service, or by Grand Serjeantry, for the Defence of the Kingdom. And possibly also, as the desire of many Owners,

ers, changed their Tenures into Knights Service. Which Introduction of new Tenures, was not nevertheless without consent of Parliament, as appears by the additional Laws before mentioned, That King *William* by the advice of Parliament made mention of by Mr. *Selden*, upon *Eadmerus* pag. 191, among which this was one, (*viz.*) *Statuimus etiam & firmiter præcipimus ut omnes Comites, Barones, Milites & Serviētes, & uniuersi Liberi homines totius Regni nostri, habeant, & teneant se semper in armis, & in equis, ut decet & oportet. Et quod sint semper prompti, & bene parati*

rati ad servicium suum integrum nobis explendum, & peragendum, cum semper opus affuerit, secundum quod nobis de Feodis debent, & Tenementis suis de jure facere. Et sicut illis statuimus, per commune consilium totius Regni nostri & illis dedimus & concessimus in Feodo jure Hereditario. Whereby it appears, that there were two kinds of Military Provisions, one that was set upon all Freeholders, by common consent of Parliament, which was usually called *Affiza Armorum*, and another that was Conventional, and by Tenure upon the Infeudation of the Tenant, which was called Knights Service, and

and sometimes Royal, and sometimes Foreign Service, and sometimes *Servitium Loricæ*.

And hence it came to pass, that (not only according to the Custom of *Normandy*, but also according to the Custom of other Countries.) These *Honorary Fees*, or *Infendations* became descendable to the eldest, and not to all the Males. And hence it is, That in *Kent*, where the Custom of Descent to all the Males, generally prevails; They pretend, a concession of all their Customs by the Conqueror, to obtain their Submission to his Govern-

Government, according to the Romantick Story of their moving Wood. Yet, even in *Kent* it self, these ancient *Tenures* or *Fees*, that are anciently held by Knights Service, are descendable to the eldest Son, as Mr. *Lambard* hath observed to my hand, in pag. 553. out of the 9th of *H. 3.* *Fitz Tit. Prescription* 63, 26 *H. 8.* 5. and the Statute of 31 *H. 8.* cap. 3. But yet, even in *Kent* it self, If Gavelkind Land, Escheat, or come to the Crown by Attainder, or Dissolution of Monasteries, and be granted to be held in Knights Service, or per *Baroniam*,
the

the Customary Descent is not changed, neither can be, but by Act of Parliament, for it is a Custom fixed to the Land.

But those *Honorary Fees*, made in ancient times, so shortly after the Conquest, did silently, and suddainly assume the Rule of Descent to the eldest, and accordingly held it; and so, (although possibly there were no Act of Parliament of those elder times, that altered the ancient course of Descents, from all the Sons to the eldest, or at least none that we know of; yet,) the use of the Neighbour Country, might intro-

introduce the same Usage here, as to these *Honorary Possessions*.

And because these *Honorary* Infeudations were many, and scattered almost through all the Kingdom in a little time, they introduced a parity in the Succession of Lands of other Tenures, as *Socage* or *Vavasories*. So that without question, by little and little almost generally in all Counties of *England* (except *Kent*, who were most Tenacious of their own Customs, in which they gloried, and some particular Fees, and Places where a contrary Usage prevailed) the gener-

nerality of Descents or Successions by little and little, as well of *Socage* Lands, as of *Knights Service*, went to the eldest Son, according to the Declaration of *King Edward* the first, in the Statute of *Wales* abovementioned, as will more fully appear by what follows.

In the time of *H. 1.* *Lambard* fol. 203. we find in his 70th Law, that it should seem, that the whole Land did not yet descend to the eldest Son, but began a little to look that way. *Primum patris Feudum primogenitus filius habet.* As to *Collateral Descents*, the Law determined thus,

thus, Lambard ut supra. Si quis sine liberis decesserit, Pater aut mater ejus in Hereditatem succedat; vel frater vel soror si pater & mater desint; si nec hos habeat, soror Patris vel Matris, & deinceps in quintum geniculum; qui cum propinquiores in parentela, sunt, Hereditario jure succedant; & dum virilis Sexus extiterit, & Hereditas abinde sit, femina non Hereditetur. By this it seems.

1. The eldest Son (though he had *Jus Primogenituræ*, the principal Fee of his Father, yet) he carried not all the Land.

2. That

2. That for want of Children the Father or Mother, inherited, before the Brother or Sister.

3. That for want of Children, Father, Mother, Brothers and Sisters, the Lands decended to the Uncles and Aunts, to the Fifth Degree.

4. That in Succession Collateral *Proximity* of Kindred was preferred.

5. That the Male was preferred before the Female; That is, the Father's Line was preferred before the

the Mothers, unless the Land descended from the Mother, and then the Mothers Line was to be preferred.

How this Law was observed in the Intervals, between *Henry* the first, and *Henry* the second, we can give no account. But the next period that we come to, is *Henry* the 2d. *Glanvil* in his seventh Book, gives us some account how the Law stood in his time, wherein, notwithstanding it will appear, there was some uncertainty in the business of Descents, or Hereditary Successions, though it was
E, much

much better polited than formerly.

The Rules then of Succession were either in reference to Goods or Lands. As to Goods, one third part went to the Wife, another third part to the Children, the other third part to the Testator's disposal; But if he had no Wife, a Moiety went to the Children, the other Moiety to his disposal, *Glan. lib. 7. c. 5.* But as to the Succession of Lands, the Rules were these:

1st, If the Lands were Knights Service, they generally went to the eldest Son; and in case of no Son,

to all the Daughters; and
in case of no Children, to
the eldest Brother.

2ly, If the Lands. were
Socage, it descended to all
the Sons, *Si fuerit Socagi-
um & id antiquitus divisum*,
only the chief House was
to be allotted to the Pour-
party of the eldest, and a
Compensation made to
the rest in lieu thereof. *Si
vero non fuerit antiquitus Di-
visum, tunc Primogenitus, se-
cundum quorundam consuetu-
dinem totam Hereditatem
obtienebit, secundum autem quo-
rundam consuetudinem post-
natus filius Hæres est, Glarvit
lib. 7. cap. 3.* So that although

E 2 Custom

Custom directed variously the Descent, either to the eldest, youngest, or all the Sons; Yet, it seems at this time *Jus commune*, or Common right spoke for the eldest Son to be Heir, no Custom intervening.

3^{ly}, As the Son, or Daughter, so their Children *in infinitum* are preferred in the Descent before the Collateral Line, or Uncles.

4^{ly}, But if a Man have two Sons, and the eldest dies in the life time of the Father, having a Son or Daughter, and then the Father

Father dies; it was then controverted, whether the Son, or the Nephew should succeed the Father, though the better Opinion seemed to be for the Nephew, *Ibid. cap. 3.*

5ly, A Bastard could not Inherit, *ibid. cap. 13.* And although by the Common and Civil Law, If *A.* hath a Son born of *B.* before Marriage, and after *A.* Marries *B.* this Son be Legitimate and Hereditary: Yet according to the Law of *England* then used, as well as after, he was not Hereditary, *Glan. lib. 7. cap. 15.*

6ly, In case the Purchaser die without Issue, the Lands descended to the Brother, and for want of Brothers to the Sisters, and for want of them to the Children of the Brothers or Sisters, and for want of them to the Uncles, and so onwards according to the Rules of Descents at this day; and the Father and Mother were not immediately to Inherit the Son, but the Brothers or Uncles, and their Children, *Glan. lib. 7. cap. 4.*

And

And it seems, that in all things else the Rule of Descent, in reference to the Collateral Line, held much the same as now: As namely, If Land descended of the part of the Father, it should not resort to the part of the Mother, *& è converso*; But in case of Purchase, for want of Heirs of the part of the Father, it resorted to the Line of the Mother, and the nearer and worthier Blood was preferred, so that if there were any of the part of the Father, though never so far distant, it hindered the descent to the Line of the

Mother, though much nearer.

There were in those times as it seems two Impediments of Descent, or Hereditary Succession which now do not at all obtain.

1. Leprosie, if so adjudged by the Sentence of the Church, this indeed I find not in *Glanvil*, but I find it pleaded, and allowed in the time of King *John*, and the Land adjudged to the Sister, *P. 4. Johannis.*

2. There

2. There was another curiosity, and it is wonderful to see how much, and how long it prevailed, for we find it in use in *Glanvil*, that wrote in King *Hen. 2d's* time; in *Bracton*, that wrote in *Hen. 3d's* time; in *Fleta*, that wrote in the time of *Ed. 1.* and in the broken year *Ed. 1.* Fitz. Avowry 235. *Nemo potest esse Tenens & Dominus & Homagium repellit perquisitum.* And therefore, if the eldest Brother had enfeoffed the second reserving Homage, and had received Homage, and then the second had died without Issue,

sue, it should have descended to the youngest, and not to the eldest Brother; *quia Homagium repellit perquisitum*, i.e. for this that I may mention it once for all, *Glan. lib. 7. cap. 1. Bra. lib. 2. cap. 30. Fleta lib. 6. cap. 1.* And so it has been for ought I can find ever since 3 *Ed. 1.* and indeed it is antiquated rather than altered, and the Fancy upon which it is grounded hath appeared trivial; for if the eldest Brother enfeoff the second reserving Homage, the second dying without Issue, it will Descend to the eldest as Heir, and the Seigniorie

nioury is extinct. Indeed it might have been some Reason to have examined, whether he might not have waved the Descent, in case his Services had been more beneficial than the Land; but there could be little Reason for this to exclude him from Succession. I shall mention no more of this nor the former Impediment, (*viz.*) Leprosie, for they are both vanished, and antiquated long since, and neither the one nor the other is at this day any impediment of Descent.

And

And now passing over the time of King *John*, and *Richard* the first, because I find nothing of moment in that time relating to the Title in question, unless the usurpation of King *John* upon his eldest Brothers Son, which he would fain have justified, by introducing a Law of preferring the younger Son before the Nephew, descended from the eldest Brother: But this pretention could no ways justify his Usurpation, as hath been shewn in the time of *Henry* the Second.

We have the Tractate
of *Bracton lib. 2. cap. 30, 31.*
and *lib. 5.* The truth is,
there is so little variance as
to the Points of Descents,
between the Law as it was
taken when *Bracton* wrote,
and the Law as it was af-
terwards taken in *Edward*
the first's time, when *Brit-*
ton and *Fleta* wrote, that
there is very little diffe-
rence between them as may
easily appear, especially by
comparing of *Bract. ubi supra*
and *Fleta Lib. 5. Chapter the*
9th, Liber the 6th, Chapters
the 1st and 2d, that the
latter seems to be in effect
an Abstract of the former,
therefore I shall set down
what

what in substance both say, and thereby it will appear, that the Rules of Descents in the times of *Henry the 3d*, and *Edward the 1st*, were very much one.

1st, The Law seems settled now unquestionably, that the eldest Son was in Common right Heir, not only in cases of Knights Service Land, but also of *Soccage Lands*, unless there was a Special Custom to the contrary, as in *Kent* and some other places, and so that Point of the Common Law is fully settled.

2^{ly},

2ly, That all the Descendants *in infinitum*, from any Person that had been Heir (if he had been living) were Inheritable: As the Descendants of the Son, of the Brother, of the Uncle, &c.

3ly, That the eldest Son dying in the life time of the Father, his Son or Issue was to have the preference as Heir to the Father before the younger Brother, and so the doubt in *Glanvil's* time was settled, *Glan. lib. 7. cap. 3. Cum quis autem moriatur habens filium postnatum & ex Primogenito filio*

filio præmorturo Nepotem, magna quidem Juris dubitatio solet esse, uter illorum præferendus sit alij in illa Successione, scilicet utrum Filius an nepos.

4ly, The Father, or Grandfather could not by Law Inherit immediately his Son.

5ly, Leprosie, though it were an exception to the Plaintiff, because he ought not to converse in the Courts of Law, yet we now where find, that it was an Impediment of Descent.

So

So that upon the whole matter for any thing I can observe in them, the Rules of Descent then stood settled in all Points as they are at this day, except those few matters which yet in process of time soon settled as they now stand, (*viz.*)

1. That Impediments of the hinderance of Descent, from him that did Homage, to him that received it, seems to have yet been in use, at least till the 3 *Ed.* 1. and in *Fleta's* time, for he puts the case and admits it.

F

2. Where

2. Whereas they both agree, that Half-blood to him who is the Purchaser, is an Impediment of the Descent; yet in case of a Descent from a Common Ancestor, Half-blood is no Impediment. For instance; A. hath Issue B. a Son, and C. a Daughter by one venter, and D. a Son by another venter, if B. Purchase in Fee, and die without Issue, it shall descend to the Sister, and not to the Brother of the Half-blood: But if the Land had descended from A. to B. and he had entered and died without Issue;

sue; it was a doubt in the time of *Bracton* and *Britton*, whether it should go to the younger Son, or the Daughter, but though it were then a doubt, yet the Law hath since that time been settled, that in both cases it descends to the Daughter, *Seseina facit Stirpem & primum gradum, & possessio fratris de feodo simplici facit sororem esse heredem.*

Upon the whole matter it seems, that abating these small inconsiderable variances, the States and Rules of Descents as they stood, in the time of *Henry* the third, or at least of *Ed-*

ward the first, were reduced to their full Complement and Perfection, and vary nothing considerably, from what they are at this day, and have continued ever since that time.

I shall therefore set down the State, and Rules of Descents in Fee-simple as they stand at this day, without meddling with particular Limitations and Entails, which vary the course of Descents in some cases from the Common Rules of Descents in Hereditary Succession, and herein we shall see what the Law hath been, and
con=

continued touching the same ever since *Bracton*, who wrote in *Henry* the third's time, now above Four hundred years since, and by that we shall see what alterations succession of time hath made therein.

And now to give a short Scheme of the Rules of Descents, or Hereditary Successions of the Lands of Subjects, as the Law stands at this day, and hath stood settled here for above Four hundred years.

All possible Hereditary Succession may be distinguished into these three kinds :

F 3

1st,

1st, Descending, as from Father to Son, or Daughter, to Nephew, or Niece.

2^{ly}, Collateral, as from Brother to Brother, or Sister and Brothers Children.

3^{ly}, Ascending, either direct, as from Son to Father, or Grand-father which is not admitted by the Laws of *England*; or in the Transversal Line, as to the Uncle or Aunt, Great Uncle, or Great Aunt, and because this Line again divides it self into the Line of the Father and Mother, this Transversal ascending Succession is either in the Line of the Father, Grand-father, &c. or in the Line of

of the Mother, Grand-Mother, &c. the former are called *Agnati*, the latter *Cognati*; I shall therefore set down a Scheme of Pedigrees, to explain the nature of Descents, or Hereditary Successions.

Pedigree.

THIS Pedigree with its Application will give a plain account of all Hereditary Succession, under their several Cases and Limitations, as will appear by these ensuing Rules, take our Mark or Epocha from the Father.

1 Rule, In Descents the Law prefers the Worthiest Blood; and upon this Account.

1st, In all Descents immediately the Male is preferred before the Female, whether in Successions, Descending, Ascending or Collateral; therefore the Son Inherits and Excludes the Daughter, the Brother is preferred before the Sister, the Uncle before the Aunt.

2^{ly}, In all Descents immediate, the Descendants from Males are preferred before the

the Descendants from Females ; and hence it is, that the Daughter of the eldest Son, is preferred in Descent from the Father, before the Son of the youngest Son, the Daughter of the eldest Brother or Uncle is preferred before the Son of the younger ; the Uncle, nay the Great Uncle, or Great Grand-fathers Brother shall Inherit before the Uncle of the Mothers side.

2 Rule, That in Descents, the next of Blood is preferred before the Remote, though equally worthy ; and upon this account.

1st,

1st, The Sister of the whole Blood, is preferred in Descents before the Brother of the half Blood, because more strictly joyned to the Brother of the whole Blood, (*viz.* by the Father and Mother) than the Brother, though otherwise more worthy of the half Blood.

2^{ly}, Because the Son, or Daughter is nearer than the Brother, the Brother or Sister than the Uncle, the Son or Daughter shall Inherit before the Brother or Sister, and they before the Uncle.

3^{ly},

3^{ly}, That yet the Father or Grand-father, or Mother or Grand-mother in a direct ascending Line, shall never succeed immediately, the Son or Grand-child: But the Fathers Brother shall be preferred before the Father, and the Grand-fathers Brother, shall be preferred before the Grand-father, and yet upon a strict account, the Father is nearer of Blood to the Son than the Uncle, yea than the Brother; for the Brother is therefore of the Blood of the Brother, because both derive from the same Parent,
the

the Common Fountain of both their Blood. And upon this account, the Father is at this day preferred in the Administration of his Sons Goods, before his Sons Brother of the whole Blood, and a Remainder limited *Proximo de Sanguine* shall vest in the Uncle.

3 Rule, That all the Descendants from such a Person, as by the Law of *England*, might have been Heir to another, hold the same right by Representation, as that Common Root, from whom they are Descended. And therefore,

1st,

1st, They are in Law in the same Right of Proximity and Worthiness of Blood, as their Root that might have been Heir, was in case he had been living: And hence it is, That the Son or Grand-child, whether Son or Daughter of the eldest Son, succeeds before the youngest Son. The Son or Grand-child of the eldest Brother, succeeds before the youngest Brother, and so in all Degrees of Succession by the right of Representation, the right of Proximity, is transferred from the Root to the Branches, and gives them

them the same preference as next, or Worthiest of Blood.

2^d, This Right transferred by Representation, is infinite and unlimited in the Degrees of those that descend from the Representer; the *Filius*, the *Nepos*, *Pronepos*, *Abnepos*, and so *in infinitum*, enjoy the same Privilege of Representation, as those from whom they derive their Pedigree, as well in Descents Lineal as Transversal; and therefore the *Abnepos*, or *Abneptis* of the eldest Brother, whether it be Son or Daughter, shall be preferred

ferred before the youngest Brother, because, though the Female be less worthy than the Male; yet she stands in right of Representation of the eldest Brother, who was more worthy than the youngest.

34, And upon this account it is, That if a Man hath two Daughters, and the eldest die in the Life of the Father, leaving six Daughters, and then the Father dies, the youngest Daughter shall have an equal share to all the rest, because they stand in Representation of their Mother,

Mother, who should have had but a Moiety.

4th Rule, That by the Laws of *England*, without a Special Custom to the contrary, the eldest Son or Brother, or Uncle excludes the younger, and the Males in an equal Degree do not all Inherit: But the Daughters whether by the same, or divers venters do Inherit together, the Father and all the Sisters do Inherit, the Brother by the same venter.

5th Rule, That the last actual Seizin in any Ancestor, makes him as it were the Root of the Descent equal to many Intents, as if he had been a Purchaser; and therefore, he that cannot according to the Rules of Descent derive his Succession to him, who was last actually seized, though he might have derived his Succession to some precedent Ancestor shall not Inherit. And hence it is, That where Lands descend to the eldest Son from the Father, and the Son enters and dies without Issue, his Sister of the whole Blood
G shall

shall Inherit as Heir to the Brother, and not the younger Son of the half Blood, because he cannot be Heir to the Brother of the half Blood. But if the eldest Son had survived the Father, and died before Entry, the youngest Son should Inherit as Heir to the Father and not the Sister, because he is Heir to Father, that was last actually seized. And hence it is, that though the Uncle is preferred before the Father in Descent to the Son; yet if the Uncle enter after the Death of the Son, and die without Issue, the Father shall Inherit

herit the Uncle, *Quia Seifina facit Stirpem.*

6th Rule, That whosoever derives a Title to any Land, must be of the Blood of him that first purchased it. And this is the Reason why, if the Son purchase Lands and dies without Issue, it shall descend to the Heirs of the part of his Father, and if he hath none, then to the Heirs of the part of his Mother, because tho' the Son hath both the Blood of the Father and of the Mother in him, yet he is of the Blood of the Mother; and the *Consanguinei* of the Mother are

Consanguinei cognati of the Son. And of the other side, if the Father had purchased the Land, and it had descended to the Son, and the Son had died without Issue, without any Heir of the part of his Father, it should never have descended in the Line of his Mother, but escheated, for though the *Consanguinei* of the Mother were *Consanguinei* to the Son, yet they were not of *Consanguinity* to the Father, who was the purchaser. But if there had been none of the Blood of the Grandfather, yet it might have resorted to the Line of the Grandmother, because

cause her *Consanguinei* were as well of the Blood of the Father as the Mothers *Consanguinity* is of the Blood of the Son. And consequently also, if the Grandfather had purchased Lands, and it had descended from him to the Father, and from him to the Son, if the Son had entered and died without Issue, his Fathers Brothers or Sisters, or their Descendants, or for want of them, his Grandfathers Brothers or Sisters, or their Descendants, or for want of them, his great Grandfathers Brothers or Sisters, or their Descendants, or for want of them his great

G 3 Grand-

Grandmothers, Brothers or Sisters, or their Descendants might have inherited; for the *Consanguinity* of the great Grandmother, was of the *Consanguinity* of the Grandfather, but none of the Line of the Mother or Grandmother, (*viz.*) the Grandfathers Wife should have inherited, for that they were not of the Blood of the first Purchaser. And the same Rule *è converso* holds in Purchases in the Line of the Mother or Grandmother, they shall always keep in the same Line, wherein the first Purchaser settled them. But it is not necessary, that he
that

that inherits be always
Heir to the Purchaser, but
it sufficeth if he be of his
Blood, and Heir to him
who was last seised. The
Father purchaseth Lands,
and it Descends to his Son
who dies without Issue, it
shall never descend to the
Heir of the part of the Sons
Mother; But if the Sons
Grandmother hath a Bro-
ther, and the Sons great
Grandmother hath a Bro-
ther, and there is no other
Kindred, it shall descend
to the Grandmothers Bro-
ther; and yet, if the Father
had died without Issue,
his Grandmothers Brother
should have been prefer-

red before his Mothers Brother, because the former was Heir of the part of his Father, though by a Female, and the latter was Heir of the part of his Mother. But where the Son is once seised, and dies without Issue, his Grandmothers Brother is to him Heir of the part of his Father, and being nearer than his great Grandmothers Brother, is preferred in Descent. But this is always intended, so long as the Line of the Descent is not broken, for if the Son alien those Lands, and then repurchase them again in Fee; Now the Rules of
De-

Descent hold as if he had been the original Purchaser, and that it had never been in the Line of the Father or Mother.

7th Rule, In Succession, as well in the Line Descending, Transversal or Ascending, the Line that is first derived from a Male Root, hath always the preference. *A.* hath Issue two Sons, *B.* and *C.* *B.* hath Issue a Son and a Daughter, *D.* and *E.* *D.* the Son hath Issue a Daughter, *F.* and *E.* the Daughter hath Issue a Son, *G.* *C.* nor any of his Descendants shall not inherit so long as there are

are any Descendants from D. and E. and E. the Daughter, nor none of her Descendants shall inherit, so long as there are Descendants from D. the Son, whether they be Male or Female.

In Descents, Collateral as Brothers and Sisters, the same Instance applied evidenceth the conclusion. But in Successions in the Line Ascending, there must be a fuller explanation, because it is darker and more obscure; I shall therefore set forth the whole Method of Transversal, Ascending, Descents in these ensuing Rules.

1st Rule, If the Son purchaseth Lands in Fee-simple, and dies without Issue, those of the Male Line Ascending *usque in infinitum* shall be preferred in the Descent according to their Proximity of Degree to the Son. Therefore the Fathers Brothers or Sisters, or their Descendants shall be preferred before the Brothers of the Grandfather and their Descendants. And again, if the Father had no Brothers nor Sisters, the Grandfathers Brothers and their Descendants, and for want of Brothers, the Grandfathers Sisters, and their

their Descendants should be preferred before the Brothers of the great Grandfather. For although by the Law of *England* the Father nor Grandfather cannot immediately inherit the Son, yet the direction of the Descent to the Collateral Line ascending, is as much as if the Father or Grandfather had been by Law inheritable, and therefore as in case the Father had been inheritable, he should have inherited the Son before the Grandfather, and the Grandfather before the great Grandfather, and consequently if the Father had

had inherited and died without Issue, his eldest Brother and his Descendants should have inherited before the younger Brother, and his Descendants, and if he had no Brothers but Sisters, his Sisters and their Descendants should inherit before his Uncles, or the Grandfathers Brothers, and their Descendants, so though the Law of *England* exclude the Father from inheriting, it substitutes, and directs the Descent as it should have been, if the Father had inherited, *viz.* Lets in those first that are in the next Degree to him.

2d Rule is this, That the Line of the part of the Mother shall never inherit, as long as there are any though never so remote of the Line of the part of the Father; and therefore, though the Mother hath a Brother, yet if the *Atavus* or *Atavia* of the Father hath a Brother or Sister, He and She shall be preferred and exclude the Mothers Brother though he is much nearer.

3d Rule, But yet farther. The Male Line of the part of the Father descending, shall *in æternum* exclude the Female

Female Line of the part of the Father ascending, and therefore in the case proposed, the Son purchasing Lands and dying without Issue, the Sister of the Father, Grandfather or great Grandfather, and so *in infinitum* shall be preferred before the Fathers Mothers Brother, though the Fathers Mothers Brother be a Male, and the Fathers Grandfathers Sister be a Female, and more remote, because it is in the Male Line, which is more worthy than the Female Line, though even the Female Line be of the Blood of the Father.

4th Rule, But as in the Male Line ascending, the more near is preferred in the Descent, before the remote; so in the Female Line descending, so it be of the Blood of the Father, the more near is preferred before the remote. The Son therefore purchaseth Lands and dies without Issue, the Father, Grandfather, and great Grandfather, and so upward, all the Male Line are dead without Brother or Sister, or any descending from them, but the Fathers Mother hath a Sister or Brother, and also the Father's

thers Grandmother hath a
Brother, and likewise the
Fathers great Grand-mother
hath a Brother; it is true,
all these are of the Blood
of the Father, and the very
remotest of these shall ex-
clude the Sons Mothers
Brother; and it is likewise
true, that the great Grand-
mothers Blood hath passed
through more Males of
the Fathers Blood, than the
Blood of the Grand-mo-
ther, or Mother of the
Father, but in this case
the Fathers Mothers Sister
shall be preferred before
the Fathers Grand-mothers
Brother, or great Grand-
H mothers

mothers Brother, because they are all in the Female Line, viz. *Cognati*, and the Fathers Mothers Sister is the nearest, and therefore shall have the preference, as well as in the Male Line ascending the Fathers Brother or Sister, shall be preferred before the Grand Fathers Brother.

5th Rule, And yet in the last case, where the Son purchaseth Lands and dies without Issue, and without Heir of the part of his Grandfather, the Land should descend to his Grandmothers Brother or Sister,
as

as Heir of the part of the Father; yet, if the Father had purchased this Land and died, and it descended to his Son who died without Issue, the Lands should not have descended to his Fathers Mothers Brother or Sister, for the Reason given in the eighth Rule, but for want of Brothers or Sisters of the Grandfather, great Grandfather, and so upward in the Male ascending Line, it should descend to the Fathers Grandmothers Brother or Sister, which is Heir of the part of the Father, who should be preferred before the

H 2 Fathers

Fathers Mothers Brother ;
which was in truth the Heir
of the part of the Mother of
the purchaser, though the
next Heir of the part of
the Father of him that last
died seized. And therefore,
as if the Father who was the
purchaser had died without
Issue, the Heirs of the part
of his Father, whether of
the Male or Female Line,
should have been preferred
before the Heir of the
part of the Mother; so the
Son that stands now in the
place of his Father, and in-
herits to him primarily in
his Fathers Line dying with-
out Issue, the same Devo-
lution

lution and Hereditary Succession, should have been as if his Father had immediately died without Issue, which should have been to his Grandmothers Brother as Heir of the part of the Father, though by the Female Line, and not to his Mothers Brother, which was only Heir of the part of his Mother, and not to take till his Fathers Fine, as well Female as Male was spent.

6th Rule, If the Son purchase Lands and dies without Issue, and it descends to any Heir of the part of

H 3 the

the Father, and then the Line of the Father. (after Entry and Possession) fail, it shall never resort to the Line of the Mother, tho' in the first Instance, or first Descent from the Son, it might have descended to the Heir of the part of the Mother: For now by this Descent and Seisin, it is lodged in the Fathers Line, to whom the Heir of the part of the Mother can never derive a Title as Heir, but it shall rather Escheat. But if the Heir of the part of the Father had not entered, but then that Line had failed, it might

might have descended to the Heir of the part of the Mother, as Heir to the Son, to whom immediately for want of Heirs of the part of the Father it might have descended.

7th Rule, And upon the same Reason, if it had once descended to the Heir of the part of the Father of the Grand-fathers Line, and that Heir had entered, it should never descend to the Heir of the part of the Father of the Grand-mothers Line, because the Line of the Grand-mother was not of Blood or *Consanguinity* to the Line of the Grandfathers side,

8th

8th Rule, If for default of Heirs of the purchaser of the part of the Father, the Lands Descend to the Line of the Mother, the Heirs of the Mother on the part of her Fathers Side, shall be preferred in Succession before her Heirs of the part of her Mothers side, because they are the more worthy. A great part of these differences are easily to be collected out of the Resolutions in the case of *Clare versus Brooke, alias Cobham*. And thus the Law stands in point of Descents, or Hereditary Succession in *England* at this Day, and for above Four hundred years past.

F I N I S

